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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re

Review of the Commission's
Regulations Governing
Television Broadcasting

MM Docket No. 91-221

ORIGINAL
FILE

COMMENTS OF BUCK OWENS PRODUCTION COMPANY, INC.

Buck Owens Production Company, Inc. ("Owens") submits the following comments in response to the Commission's Notice of Proposed Rulemaking ("NPRM") concerning regulations governing television broadcasting. These comments are narrow in scope, urging only that stations previously acquired via "failed station" waivers should be an exception to the AM/FM/TV ownership limits that apply to a given market.

Owens is the licensee of an AM-FM-TV combination -- KCWR(AM), KUZZ-FM, and KUZZ-TV -- in Bakersfield, California. While the one-to-a-market rule would ordinarily prohibit Owens from owning both the radio stations and KUZZ-TV, Owens acquired KUZZ-TV (which was then in bankruptcy) pursuant to a "failed station" waiver of Section 73.3555(b) granted by the Commission in 1990. See, Memorandum Opinion and Order, FCC 90-298, released November 8, 1990. With the recent amendment of Section 73.3555(a)(1), which permits a licensee to own two FM stations

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in the Bakersfield market, Owens also proposes to acquire KTIE(FM), Bakersfield, California. (An application will be filed as soon as the new radio ownership rules become effective.) Acquisition of KTIE will make Owens the licensee of two FMs, one AM, and one TV station in the market.

In paragraphs 27 and 28 of the NPRM, the Commission proposes several alternative approaches to the question of radio/television ownership in the same market. Owens supports any approach that would permit common ownership of at least one AM, one FM, and one TV station in a market without need for a waiver (except perhaps in very small markets having fewer than, say, ten independent broadcast voices). Such an approach is amply justified by the extent of existing mass media diversity, which the Commission has well documented in the NPRM.

There is one circumstance, however, for which the Commission should clearly make an exception if the new rules would otherwise limit a television licensee to owning just one AM and one FM in the same market. Where an AM/FM licensee has previously received a "failed station" waiver to acquire a television station in the market (as Owens did when it acquired KUZZ-TV), ownership of the television station should not preclude the licensee from acquiring a second AM and/or FM station in the market. Such a restriction would unfairly force the AM/FM licensee to divest a previously rescued "failed" television station if the licensee wish to expand its AM/FM

holdings in the market. If compelled to make the choice, the licensee might very well find AM/FM expansion to be more attractive than retaining a "failed" television station. In that event, the "failed" station would be divested, quite possibly to fail once again. This disruption would impair the public interest by interrupting continuity of service under one owner and jeopardizing the ability of the divested station to remain competitive in a market where only recently it had failed. A divestiture requirement would also unfairly penalize the licensee for having taken the economic risk of acquiring the "failed" station in the first place and investing in its improvement.

To avoid this harmful result, the Commission should include the following exception in any rule that otherwise limits a television licensee to owning one AM and one FM in the market:

"provided, however, that if the licensee acquired the television station pursuant to a 'failed station' waiver under Note 7 of Section 73.3555, the radio station limits applicable to the licensee under this paragraph shall be those specified in Section 73.3555(a)(1)."

Of course, such an exception would be unnecessary if consolidated radio and television ownership were permitted under the respective rules for each service without the additional

"one-to-a-market" limitation (an approach proposed in paragraph 27 of the NPRM). But if a more restrictive rule is adopted, then the exception described above is warranted for the reasons stated.

Respectfully submitted,

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